

Before the  
Administrative Hearing Commission  
State of Missouri



THOMAS FRANCEL, M.D.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 13-1016 RS
	)	
DIRECTOR OF REVENUE,	)	
Respondent.	)	

**DECISION**

We dismiss the complaint of Thomas Francel, M.D. (“Francel”) for lack of jurisdiction.

Procedure

Francel filed his complaint with this Commission on June 8, 2013. The Director of Revenue (“the Director”) filed an answer and motion to dismiss on July 10, 2013. Francel filed his response to the motion to dismiss on July 18, 2013.

Findings of Fact

1. The Field Compliance Bureau of the Missouri Department of Revenue (“the Department”) audited “Thomas J. Francel MD Plastic Surgery PC.”<sup>1</sup>
2. The auditor concluded that Francel had additional sales and use tax liability of \$6,178.59, including interest and additions to tax.

---

<sup>1</sup> We note that, although the professional corporation was the audited taxpayer, the appeal was filed by Dr. Francel. The proper party in interest is the taxpayer, but we do not address the issue for reasons discussed below.

3. On April 11, 2013, the auditor sent Francel the audit report.<sup>2</sup>
4. In her letter to Francel, the auditor stated that “[t]he assessment notices will be delivered be certified mail,”<sup>3</sup> and included a copy of the “Missouri Taxpayer Bill of Rights and the Taxpayer Choices upon Assessment” form for Francel’s review.
5. Francel filed his complaint on June 8, 2013. His complaint stated he was appealing from “the sales and use tax audit report as filed by the Field Compliance Bureau in St. Louis.”

### Conclusions of Law

We lack jurisdiction over this case. This Commission was created by statute.<sup>4</sup> “As a creature of statute, an administrative agency's authority is limited to that given it by the legislature.”<sup>5</sup>

Sections 144.261 and 621.050 allow us to review final decisions of the Director of Revenue on sales tax and use tax. However, in this instance, rather than presenting us with a final decision of the Director of Revenue, Francel’s complaint seeks to challenge an audit report. We lack the statutory authority to review the audit and therefore lack jurisdiction over this case.

Attached to Francel’s opposition to the Director’s motion to dismiss is a document purporting to be a “final decision” of the Director. But that document is the form entitled “Taxpayer Choices Upon Receipt of Assessment” included with the audit report. Both documents (the forms in the audit report and attached to the response) have an identical handwritten 56 in the bottom center—the page number from the audit report. That document is not a final decision of the Director.

---

<sup>2</sup> The auditor technically sent the audit report to Francel’s certified public accountant (CPA). Francel had given power of attorney to his CPA with regard to the audit.

<sup>3</sup> Audit Report at 2. The audit report is attached to the complaint.

<sup>4</sup> § 621.015; § 621.050. Statutory references are to RSMo 2000 unless otherwise indicated.

<sup>5</sup> *State ex rel. Missouri Public Defender Com’n v. Waters*, 370 S.W.3d 592, 598-599 (Mo. 2012).

Section 144.230 states:

Any amount assessed or any additional amount assessed by the director of revenue under the provisions of sections 144.010 to 144.525, together with the penalty, if any there be, shall be due and payable from the person to the director of revenue sixty days after the service upon or mailing to the person of notice of such assessment or such additional assessment, except only for such amounts as to which the person has filed a petition for review with the administrative hearing commission.

Section 144.261 provides that complaints filed with this Commission must be filed within sixty days of the final decision of the Director. Read together, we interpret these statutes to mean that the assessment or additional assessment is the final decision of the Director. Otherwise, the assessed taxes would become due before the taxpayer could appeal. Thus, we conclude in sales and use tax cases the Director's final decision is the assessment itself.

Here, Francel has not presented us with an assessment or any other documentation requiring him to submit any taxes to the Director.<sup>6</sup> Therefore, he has not shown the Director has issued a final decision in his case.<sup>7</sup> We lack jurisdiction to hear his complaint at this time.

### **Conclusion**

We dismiss the complaint for lack of jurisdiction.

SO ORDERED on July 22, 2013.

/s/ Mary E. Nelson  
MARY E. NELSON  
Commissioner

---

<sup>6</sup> We understand why Francel believes that the Director had issued a final decision, especially considering the inclusion of the "Taxpayer Choices Upon Receipt of Assessment" form that was included with the audit and the language in it referencing a "final assessment."

<sup>7</sup> If the Director assesses sales and use taxes against Francel for the 2010-2012 tax years, Francel may challenge that final decision by filing a timely appeal with this Commission.